

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 15241 of 2005(M)

OS.1104/1987 of ADDL.M.C.,KOZHIKODE-I

.....

PETITIONER:

1. M.P.LAKSHMI, D/O. CHANDUKUTTY,
RESIDING AT CHEVAYOOR AMSOM AND DESOM,
KOZHIKODE TALUK.
2. SUNIL KUMAR, S/O. DEVADASAN,
RESIDING AT CHEVAYOOR AMSOM AND DESOM,
KOZHIKODE TALUK.
3. SHEENA, D/O. DEVADASAN,
RESIDING AT CHEVAYOOR AMSOM AND DESOM,
KOZHIKODE TALUK.
4. SHIJITH, S/O. DEVADASAN,
RESIDING AT CHEVAYOOR AMSOM AND DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR, KOZHIKODE.
2. THE TAHSILDAR (REVENUE RECOVERY),
KASABA AMSOM AND DESOM, KOZHIKODE,
3. M.P. DEVADASAN, S/O. RARU,
CHEVAYOOR AMSOM AND DESOM, KOZHIKODE TALUK.

R3 BY SRI.A.JAYASANKAR
SRI.C.ANIL KUMAR
SHRI.SHYSON P.MANGUZHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) No. 15241/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE JUDGMENT DATED 31/05/91 IN OS NO.1104/87 ON THE FILES OF ADDL. MUNSIFF'S COURT, KOZHIKKODE.

P2 : COPY OF JUDGMENT DATED 05/09/97 IN A.S.NO.1/93 ON THE FILES OF DISTRICT COURT, KOZHIKKODE.

P3 : COPY OF THE JUDGMENT DATED 19/11/2004 IN CMA NO.239/07 OF this HONOURABLE COURT.

P4 : COPY OF ORDER DATED 31/03/2005 PASSED BY THE MUNSIFF'S COURT, KOZHIKKODE II IN O.S.NO.1104/1987.

// TRUE COPY //

PA TO JUDGE.

jg

PIUS C.KURIAKOSE, J.

W.P.(C) No. 15241 of 2005

Dated, this the 22nd day of August, 2007

J U D G M E N T

It is a question of court fee which has been raised by the plaintiffs in this writ petition filed under Article 227 of the Constitution of India. The suit is for a declaration that the proceedings initiated against the plaint schedule property is null and void and not binding on the plaint schedule property and for perpetual injunction restraining the respondents, namely the State, Tahsildar (Revenue Recovery) and a party respondent, from proceeding against the properties for arrears alleged to be due from the party respondent. The suit was decreed on 31/05/1991 as prayed for. The respondents 1 and 2 challenged the decree and judgment in appeal before the District Court. The District Court considered the appeal, A.S.1/1993 and remanded the matter to the Trial Court observing that the matter requires reconsideration. Against the remand order a Civil Miscellaneous Appeal was preferred to this Court, which was dismissed by this Court with a direction to consider certain documents produced by the respondents. Under the impugned judgment, the trial court framed an additional issue concerning the sufficiency of court fee and held

that the court fee paid is insufficient. Assailing the above findings, the present writ petition has been filed for quashing Ext.P4 judgment, which is a judgment on additional issue No.9 as to whether the suit valuation shown and court fee remitted thereunder are proper and correct.

2. I have heard the submissions of Shri.M.C.Sen, learned senior counsel for the petitioner and also those of Shir.Shyson P.Manguzha, learned Government Pleader. The learned Government Pleader would support the impugned order on the authority of the judgment of a Division Bench in **Jaya Vs. State of Kerala**, reported in 2005 (2) KLT 543.

3. Learned senior counsel for the petitioner would assail the impugned order on the basis of the judgment of the Division Bench in **Sreekumaran Vs. State of Kerala and Another**, reported in 1996 (2) KLT 21, in **Rajalakshmi Associates Vs. Sree Meenakshmi Papers**, reported in 2003 (2) KLT 225 and mainly on the judgment in **Itty Vs. State of Kerala**, reported in 1997 (2) KLT 597. Copy of the plaint was also made available to me so as to enable him to appreciate the contention that the petitioners' never claimed a relief challenging the amount demanded from the 3rd respondent and therefore, the court fee payable under Section 25 (d)(i) and proviso to Section 27(c) is not applicable. Shri.Sen would

submit that the court below failed to notice that the petitioners are not seeking a declaration of title to the property and that they are not challenging the quantum of amounts involved in the Revenue Recovery proceedings. The judgment of this Court in **Itty** Vs. **State of Kerala**, reported in 1997 (2) KLT 597 will apply to the facts of this case. The suit was not filed to confer a declaration that the respondents 1 & 2 are not entitled to recover the amount of Rs.4,72,730.60. The amount is not a subject matter and the court below wrongly assumed the same to be the subject matter of the suit.

4. Having considered the rival submissions addressed at the Bar, in the light of the proceedings cited and having gone through the plaint, I find merit in the submissions of the learned senior counsel. The facts of the decision in **Sreekumaran** Vs. **State of Kerala and Another**, reported in 1996 (2) KLT 21 does not apply to the facts of this case. In the above case subject matter was the liability of the plaintiff therein and therefore, Section 25(d)(i) had got application. Accordingly, the result of the discussion is that I set aside Ext.P4 and held that the court fee paid by the plaintiff is sufficient.

This writ petition is allowed as above.

(PIUS C.KURIAKOSE, JUDGE)